



DEPARTMENT OF THE NAVY  
NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND  
BASE REALIGNMENT AND CLOSURE  
PROGRAM MANAGEMENT OFFICE WEST  
33000 NIXIE WAY, BLDG 50 Suite 207  
SAN DIEGO, CA 92147

5000-110  
Ser BPMOW/311  
October 13, 2021

Mr. Stratton P. Constantinides  
WOOD, SMITH, HENNING & BERMAN LLP  
10960 Wilshire Boulevard, 18<sup>th</sup> Floor  
Los Angeles, CA 90024-3804

Dear Mr. Constantinides:

This correspondence is in regard to your Freedom of Information Act (FOIA) request of February 26, 2021, in which you seek the following:

1. *Any and all documents, including correspondence and email correspondence, referring or relating to any communication between the San Diego Regional Water Quality Control Board and/or its staff (collectively "Regional Board") and the Department of Defense / Department of the Navy (collectively "DON") concerning the NTC Boat Channel, including, but not limited to, Installation Restoration Site 12 ("IR Site 12") from April 15, 2019 to Present;*
2. *Any and all documents, including correspondence and email correspondence, referring or relating to the Regional Board's December 16, 2020 letter to the DON entitled "No Further Action for Installation Restoration Site 12, Boat Channel Sediments, Former Naval Training Center, San Diego, California;*
3. *Any and all documents, including correspondence and email correspondence, referring or relating to the Regional Board's April 16, 2019 letter to the DON entitled "Final Remedial Action Completion Report, Installation Restoration Site 12, Boat Channel Sediments, Former Naval Training Center, San Diego, California, March 2019";*
4. *Any and all documents, including correspondence and email correspondence, referring or relating to the City of San Diego's comments on the DON's August 24, 2020 "Draft Finding of Suitability to Transfer for Parcels III-B And VII, Former Naval Training Center, San Diego, San Diego County, California" ("FOST");*
5. *Any and all documents, including correspondence and email correspondence, exchanged between the Regional Board and the DON regarding the FOST.*

Your request was received by this office on February 26, 2021 and assigned file number DON-NAVY-2021-004083. Please cite this number in any future communications with our office regarding this request.

On March 8, 2021, this office notified you of the need to clarify the scope of your request and to pay fees associated with your request. Your email dated March 19, 2021 requested information about what type of clarification to the scope was needed, and requested a waiver of all fees. On March 24, 2021, Ms. Meredith Richards, Associate Counsel for this office, responded regarding the clarification of scope:

- Requesting clarification of why the request for Items 2 and 3 were for records related specific letters between the Regional Board and the DON, which would logically also be captured under the Item 1, and asking whether there was something specifically sought in Items 2 and 3 that would not be captured by Item 1.
- Requesting confirmation that environmental documents referenced in records at the center of Items 2 and 3 could be excluded from the scope of the request since those environmental documents are readily available to the City of San Diego.

Your response on March 25, 2021 indicated that (1) “the City is looking for all documents outlined in Items 1, 2, and 3. Understanding that Item 1 is a broader category, if there are documents related to Items 2 (No Further Action Letter) and 3 (Letter re Final RACR) that pre-date April 15, 2019, then City is requesting that those documents also be produced. It should also be noted that the Final RACR (mentioned Item 3) was prepared in March 2019, and as such we anticipate that there will be pre-April 15, 2019 documents responsive to this request in the DON's possession”, and (2) confirmed that “the City is already in possession of publicly-available documents.”

On April 14, 2021, we notified you that we granted your fee waiver request and that we would proceed with the processing of your request.

During our search, we examined the files maintained by our office and NAVFAC Administrative Record. On May 13, 2021, we provided a Final Determination regarding your response, notifying you that we have identified approximately two hundred (200) records as responsive to your request and responsive records would be released in phases as processing is completed. Sixteen (16) records were released to you on June 4, 2021.

On August 16, 2021, forty (40) records were identified as duplicative of other records, six (6) were provided via FOIA Online in their entirety and three (3) records were provided that were partially redacted under FOIA Exemption 2 [5 U.S.C. § 552(b)(2)], which exempts from disclosure records that are related solely to the internal personnel rules and practices of an agency; FOIA Exemption 5 [5 U.S.C. § 552(b)(5)], which exempts from disclosure inter-agency or intra-agency documents that are draft or deliberative in nature and also protects Attorney Work Product and Attorney-Client Privileged Information; and FOIA Exemption 6 [5 U.S.C. § 552(b)(6)], which exempts from disclosure information about individuals that would constitute a clearly unwarranted invasion of personal privacy. Sixty five (65) responsive records were located that were exempt in their entirety from disclosure under Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)).

This response identifies sixty one (61) additional records that are responsive, and seventeen (17) records that are duplicative of other records. Of the sixty one (61) responsive records, five (5) are provided with this response via FOIA Online in their entirety.

Fifty six (56) responsive records were located that are exempt in their entirety from disclosure under Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)) which protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.” These records are deliberative, attorney-client/attorney work product privileged, or both. This Exemption protects pre-decisional deliberative information, the release of which would harm the government’s decision-making process. Certain withheld records are draft versions that are privileged and pre-decisional, as they are not in final form, marked draft, contain information that cannot be verified as accurate, or final, and contain comments and edits from multiple sources. These draft records do not contain the final decision or response of the agency. Release of these draft documents could cause harm to the Navy’s deliberations by discouraging the free and frank exchange of opinions or potentially result in public confusion by disclosing information that is not consistent with the outcome of the deliberative process. Although portions of the exempt records could be considered factual, such information is inextricably intertwined with deliberative material and has therefore been withheld from release. Other withheld records are Attorney Work Product and Attorney-Client Privileged Information. This applies to documents prepared by or at the direction of attorneys in reasonable anticipation of litigation, with the BRAC PMO as the client, as well as confidential information shared between BRAC PMO and their attorney.

This letter closes this FOIA request. You have the right to an appeal. It must be received (i.e., post-marked if by mail or submitted if by FOIAonline) within 90 calendar days from the date of this letter. Please provide the following in your appeal:

- a letter requesting an appeal that explains what you are appealing with any supporting arguments or reasons you think may be worthy of consideration;
- a copy of your initial request;
- a copy of the letter of denial.

There are two ways to file an appeal—through FOIAonline or by mail.

1. Through FOIAonline. This will work only if you set up an account on FOIAonline before you make the request that you would like to appeal. To set up an account, go to FOIAonline.gov, click “Create Account” (a link located within the blue banner at the top in the upper right corner), enter your data into the field that subsequently appears, and click “Save” (at the bottom left of the screen). With your account thereby created, you will be able to file an appeal on FOIAonline for any request you file on FOIAonline thereafter. To do so, locate your request (enter a keyword or the request tracking number in the “Search for” field on the “Search” tab), click on it, then the “Create Appeal” tab in the left-hand column. Complete the subsequent field, click “Save,” and FOIAonline will submit your appeal.
2. By mail. Address your appeal to:

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Department of the Navy  
Office of the General Counsel  
1000 Navy Pentagon, Room 5A532  
Washington, DC 20350-1000

Whichever method is used to file your appeal, please also provide a copy to us at [meredith.l.richards2.civ@us.navy.mil](mailto:meredith.l.richards2.civ@us.navy.mil), or:

NAVFAC BRAC PMO West  
33000 Nixie Way  
Bldg 50 Suite 207  
Attn: Meredith Richards  
San Diego, CA 92147

Please note that as a result of increases in the Health Protection Condition (HPCON) level, the BRAC PMO offices are limited to mission-essential personnel only and are maximizing the use of telework for other personnel. You are strongly encouraged to submit a copy of your appeal to BRAC PMO via email to ensure we receive timely notification that you have filed an appeal in accordance with the instructions above.

You have the right to contact the Department of the Navy FOIA Public Liaison, Mr. Christopher Julka, at [christopher.a.julka,civ@us.navy.mil](mailto:christopher.a.julka,civ@us.navy.mil) or 703-697-0031 for assistance with modifying your request. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-01, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Should you wish to contact the BRAC Program Management Office to discuss your request further, please contact Ms. Meredith Richards at 619-524-1637 or [meredith.l.richards2.civ@us.navy.mil](mailto:meredith.l.richards2.civ@us.navy.mil).

Sincerely,

KIMBERLY A. OSTROWSKI  
Director